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November 4, 1997

Mr. William Kennard
Chairman Designate
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Ex Parte Letter Re: Cases WT 97-197¹⁹⁷ MM Docket 97-182 and DA 96-2140

Dear Chairman Kennard:

Please terminate all action in the above mentioned cases. They attempt to make the FCC the "Federal Zoning Commission" for cellular and broadcast towers and violate the intent of Congress, the Constitution and principles of Federalism.

Congress and the courts have long recognized that zoning is a matter of peculiarly local concern. The FCC has no zoning knowledge or expertise and is not accessible to most citizens. For these reasons and others, Congress expressly reserved local zoning authority over cellular towers in the 1996 Act. Now the FCC is trying to get this jurisdiction back by issuing rules which improperly infringe on local zoning authority.

The FCC's efforts assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. The FCC ignores the fact that we cannot necessarily control the statements citizens make during public meetings of our legislative bodies. At our public hearings citizens are allowed to speak about their concerns on particular items, no matter what those concerns might be. Public comment is part of what local government is all about.

Some of our citizens may be concerned about radiation from cellular towers. For the reasons just described we cannot necessarily prevent them from mentioning their concerns to us. The FCC is attempting to use this as a means to seized zoning authority and reverse local decisions because they contend that these decisions may have been "tainted" by public concerns over radiation, even if the decisions listed were completely acceptable. The FCC wants the authority to second guess local governments and substitute its judgement as to what the "true reasons" were for municipal action. This violates the basic principles of Federalism, Freedom of Speech and the rights of our citizens to petition their government.

The FCC, like the courts, is bound by the stated reasons given by a municipality. Either these reasons are sufficient to uphold the decision or they are not. The FCC cannot "second guess" a municipality's true reason any more than the courts can "second guess" the true reasons

for the FCC's decisions.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that for some municipalities moratoria are a well recognized zoning tool, particularly while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning, and this includes moratoria.

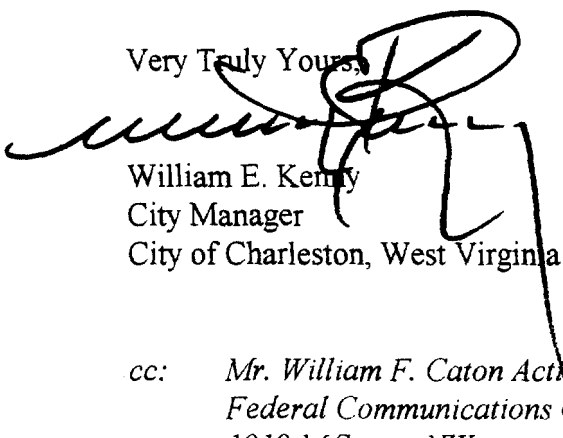
Similarly, please terminate the FCC's proposed rulemaking preempting local zoning of broadcast towers. As you well know, broadcast towers can be over 2,000 feet high. It is therefore astounding that you would propose that municipalities can't consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. Safety always has to be the first priority.

Setting artificial time limits for municipalities to act on environmental, zoning and building permit approvals for such towers serves no useful purpose. It is a violation of the US Constitution, the Communications Act and Federalism for you to put time limits on municipalities to act on all local approvals then state that all such applications will be automatically deemed granted if we don't act within this time frame, even if the application is incomplete or violates state or local law.

The FCC should consider how it would react if it was told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21 to 45 days; that this rule applied whether or not the application was complete; whether or not the applicant was foreign or domestically owned or otherwise qualified; or even whether the frequencies were available. And the rule would apply without regard to whether the tower for the station was at the end of an airport runway, in a wetland or in a historic district.

For these reasons the proposed actions violate the Communications Act and the Constitution. Please terminate all these proceedings without taking actions proposed therein.

Very Truly Yours,



William E. Kenny
City Manager
City of Charleston, West Virginia

cc: Mr. William F. Caton Acting Secretary
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